LIEN-YANG v CHIN-FU LEE & ORS (B61/2018)
CHAO-LING HSU v RACQ INSURANCE LIMITED (B62/2018)
CHIN-FU LEE v RACQ INSURANCE LIMITED (B63/2018)

Court appealed from: Supreme Court of Queensland Court of Appeal [2018] QCA 104

Date of judgment: 1 June 2018

Special leave granted: 16 November 2018

On 25 September 2013 Lien-Yang Lee ("Lien-Yang") sustained severe spinal injuries in a car accident on North Stradbroke Island. He has been left with a partial tetraplegia from which he will not recover. He was 17 years old at the time of the accident. Lien-Yang claimed damages for his injuries, alleging that they were caused by the negligence of his father, Chin-Fu Lee as the driver of the car in which he was travelling, a Toyota Tarago. His mother, Chao-Ling Hsu, was the owner of that vehicle. The case was defended by the compulsory third party insurer, RACQ Insurance Limited ("RACQ").

The parties agreed on the quantification of Lien-Yang's damages. They also agreed that the accident, which involved a head on collision between the Toyota and another vehicle, was caused solely by the negligence of the driver of the Toyota. The only issue at the trial was whether it was Lien-Yang's father who had been driving the Toyota, or instead, as RACQ contended, it had been Lien-Yang himself.

The trial judge, Justice Boddice, found that it was Lien-Yang who had been driving the Toyota and consequently his claim was dismissed. Upon appeal to the Queensland Court of Appeal, the ultimate question was whether that finding was correct. Before Justice Boddice, RACQ had counter-claimed against Lien-Yang and each of his parents, for payment of monies which RACQ had paid in response to notices of claim lodged by them after the collision. RACQ said that it had been induced to pay those monies by deceitful representations by Lien-Yang and his parents that the driver had been the father. Justice Boddice upheld that counter-claim. He then ordered Lien-Yang and his parents to pay $439,840.96, and then he also ordered Lien-Yang's parents to pay a further sum of $234,428.41. Those orders were also appealed. The outcome of those appeals again turned upon the question of whether Lien-Yang was the driver.

On 1 June 2018 the Queensland Court of Appeal (Fraser, Philippides and McMurdo JJA) dismissed Lien-Yang's and his parents' appeals. In a case that their Honours found to be finely balanced, they found that Justice Boddice had not misused his advantage in both hearing and seeing the evidence as it was given. Their Honours found that the DNA evidence, which linked Lien-Yang's DNA to the driver's side airbag, was persuasive evidence that he was the driver. They found that such evidence outweighed alternative theories, such as that proposed by Dr Grigg, a mechanical engineer with extensive experience in the investigation of motor vehicle accidents. In Dr Grigg's opinion, Lien-Yang's facial injuries were inconsistent with those that could be expected if he was the

driver. Alternatively Dr Grigg said Lien-Yang's father's injuries were very similar to those to be expected if he was the driver.

The Court of Appeal held that Justice Boddice's decision was neither "glaringly improbable" nor "contrary to compelling inferences". Their Honours held that Lien-Yang's sometimes powerful submissions had failed to demonstrate that the decision of the trial judge was wrong. The appeals were therefore dismissed.

In each matter the grounds of appeal are:

- The Court of Appeal failed to give adequate reasons for its judgment by failing to address the evidence of Dr Grigg regarding the function of seatbelt pre-tensioners and the speed of inflation and deflation of the airbag and the contended inferences which arose from it.

- The Court of Appeal erred in failing to conclude that the trial judge had misused his advantage as the trial judge and that the finding that Lien-Yang was the driver of the vehicle was contrary to compelling inferences from uncontroverted evidence.